

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HAYDEN,)	CASE NO. 1:17CV2635
)	
Plaintiff,)	SENIOR JUDGE
)	CHRISTOPHER A. BOYKO
vs.)	
)	<u>SCHEDULING ORDER</u>
2K GAMES, INC., et al.,)	
)	
Defendants.)	

CHRISTOPHER A. BOYKO, SR. J.:

This matter comes before the Court upon the Joint Proposal for Trial Dates (ECF DKT #199) filed on October 14, 2022. Upon consideration of the parties' proposals, the Court enters the following schedule¹:

I. Trial

Jury Trial is set for **May 1, 2023 at 9:00 a.m ET.** in Courtroom 328 East Chambers of

¹ The parties shall comply with the provisions of the Court's Standing Civil Trial Order where it does not conflict with the terms of this Order.

the Howard Metzenbaum Courthouse, 201 Superior Avenue, Cleveland, Ohio.²

The Final Pre-Trial is set for April 17, 2023 at 2:00 p.m. ET

II. Trial Briefs and Related Filings.

The Court orders amended trial submissions in light of its summary judgment and *Daubert* rulings. Therefore, revised trial briefs, jury instructions, deposition designations and omnibus motions in limine are due by March 20, 2023. Oppositions to the omnibus motions in limine and objections to the deposition designations are due by April 7, 2023.

III. Interim Status Conference.

An Attorney Telephone Status Conference is set for March 1, 2023 at 2:00 p.m. ET.

The parties shall be prepared to discuss the timing of the Supreme Court ruling in *Warhol* and to let the Court know what technology is needed for trial presentation so that the Court's IT Department can accommodate the parties' requirements.

IV. Warhol Briefing.

The Court orders contemporaneous briefing on the impact of the U. S. Supreme Court case of *Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith*, which was argued on October 12, 2022. The Court seeks the parties' input regarding "fair use," a defense which turns on whether the alleged copier's use is "transformative" and as well, a mixed law and fact question which the Court left for trial in this matter. The briefs, not to exceed 15 pages, are due by February 13, 2023.

² The parties are advised that this trial date is flexible, depending on the issuance of the decision by the Supreme Court in *Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith* which may determine a major issue in this action.

V. Pending Motions.

In view of the revised schedule in this case, the pending Omnibus Motions in Limine (ECF DKT #169*SEALED; ECF DKT #171*SEALED; ECF DKT #172*PUBLIC VERSION; ECF DKT #173*PUBLIC VERSION) are denied, subject to re-filing.

IT IS SO ORDERED.

DATE: October 20, 2022_____

s/Christopher A. Boyko
CHRISTOPHER A. BOYKO
Senior United States District Judge